

AMENDED IN ASSEMBLY JANUARY 7, 2008

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 644

Introduced by Assembly Member Dymally

February 21, 2007

~~An act to amend Section 4610 of the Labor Code, relating to workers' compensation. An act to amend Sections 904.1, 1283.4, 1285, and 1286.2 of the Code of Civil Procedure, relating to arbitration.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 644, as amended, Dymally. ~~Workers' compensation: medical treatment utilization review. Arbitration awards.~~

(1) Existing law provides that an appeal, other than in a limited civil case, is to the court of appeal. Existing law specifies those types of orders and judgments from which an appeal may be taken, including, but not limited to, an order directing payment of monetary sanctions by a party or an attorney for a party, if the amount exceeds \$5,000.

This bill would add an order upholding an arbitration award.

(2) Existing law requires an arbitration award to include a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy.

This bill would provide that the arbitration award shall be based upon, and consistent with, the law that would be applied by a California court.

(3) Existing law authorizes any party to an arbitration in which an award has been made to petition the court to confirm, correct, or vacate the award.

This bill would provide that all parties to the arbitration shall have the same rights of appeal to state courts of appeal as if their case had been tried in superior court.

(4) Existing law requires the court to vacate an arbitration award if the court makes a determination that the award was procured by corruption, fraud, or other undue means, or that certain other grounds for vacation of the award exist.

This bill additionally would require the court to vacate an arbitration award if the court determines that the award is inconsistent with the law that would be applied by a California court.

~~Existing law establishes a workers' compensation system to compensate an employee for injuries sustained in the course of his or her employment. Existing law requires every employer to establish a medical treatment utilization review process in compliance with specified requirements, either directly or through its insurer or an entity with which the employer or insurer contracts for these services. Existing law prohibits any person other than a licensed physician who is competent to evaluate the specific clinical issues involved in the medical treatment services requested by the physician, when these services are within the scope of the physician's practice, to modify, delay, or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve.~~

~~This bill would also require any physician who conducts such an evaluation to hold an identical type of license as that of the physician requesting the treatment. The bill would also require the utilization review process to be conducted as a peer-to-peer evaluation process directed toward an evaluation of the medical treatment requested by the physician treating an injured worker, and not to an examination of the specialty of physician requesting the treatment.~~

~~This bill would also make a nonsubstantive clarifying change.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 904.1 of the Code of Civil Procedure is*
- 2 *amended to read:*
- 3 904.1. (a) An appeal, other than in a limited civil case, is to
- 4 the court of appeal. An appeal, other than in a limited civil case,
- 5 may be taken from any of the following:

1 (1) From a judgment, except (A) an interlocutory judgment,
2 other than as provided in paragraphs (8), (9), and (11), or (B) a
3 judgment of contempt that is made final and conclusive by Section
4 1222.

5 (2) From an order made after a judgment made appealable by
6 paragraph (1).

7 (3) From an order granting a motion to quash service of
8 summons or granting a motion to stay the action on the ground of
9 inconvenient forum, or from a written order of dismissal under
10 Section 581d following an order granting a motion to dismiss the
11 action on the ground of inconvenient forum.

12 (4) From an order granting a new trial or denying a motion for
13 judgment notwithstanding the verdict.

14 (5) From an order discharging or refusing to discharge an
15 attachment or granting a right to attach order.

16 (6) From an order granting or dissolving an injunction, or
17 refusing to grant or dissolve an injunction.

18 (7) From an order appointing a receiver.

19 (8) From an interlocutory judgment, order, or decree, hereafter
20 made or entered in an action to redeem real or personal property
21 from a mortgage thereof, or a lien thereon, determining the right
22 to redeem and directing an accounting.

23 (9) From an interlocutory judgment in an action for partition
24 determining the rights and interests of the respective parties and
25 directing partition to be made.

26 (10) From an order made appealable by the provisions of the
27 Probate Code or the Family Code.

28 (11) From an interlocutory judgment directing payment of
29 monetary sanctions by a party or an attorney for a party if the
30 amount exceeds five thousand dollars (\$5,000).

31 (12) From an order directing payment of monetary sanctions
32 by a party or an attorney for a party if the amount exceeds five
33 thousand dollars (\$5,000).

34 (13) From an order granting or denying a special motion to
35 strike under Section 425.16.

36 (14) *From an order upholding an arbitration award.*

37 (b) Sanction orders or judgments of five thousand dollars
38 (\$5,000) or less against a party or an attorney for a party may be
39 reviewed on an appeal by that party after entry of final judgment

1 in the main action, or, at the discretion of the court of appeal, may
2 be reviewed upon petition for an extraordinary writ.

3 *SEC. 2. Section 1283.4 of the Code of Civil Procedure is*
4 *amended to read:*

5 1283.4. The award shall be in writing and signed by the
6 arbitrators concurring therein. It shall include a determination of
7 all the questions submitted to the arbitrators, the decision of which
8 is necessary in order to determine the controversy. *The award shall*
9 *be based upon, and consistent with, the law that would be applied*
10 *by a California court.*

11 *SEC. 3. Section 1285 of the Code of Civil Procedure is*
12 *amended to read:*

13 1285. Any party to an arbitration in which an award has been
14 made may petition the court to confirm, correct, or vacate the
15 award. The petition shall name as respondents all parties to the
16 arbitration and may name as respondents any other persons bound
17 by the arbitration award. *All parties to the arbitration shall have*
18 *the same rights of appeal to state courts of appeal as if their case*
19 *had been tried in superior court.*

20 *SEC. 4. Section 1286.2 of the Code of Civil Procedure is*
21 *amended to read:*

22 1286.2. (a) Subject to Section 1286.4, the court shall vacate
23 the award if the court determines any of the following:

24 (1) The award was procured by corruption, fraud or other undue
25 means.

26 (2) There was corruption in any of the arbitrators.

27 (3) The rights of the party were substantially prejudiced by
28 misconduct of a neutral arbitrator.

29 (4) The arbitrators exceeded their powers and the award cannot
30 be corrected without affecting the merits of the decision upon the
31 controversy submitted.

32 (5) The rights of the party were substantially prejudiced by the
33 refusal of the arbitrators to postpone the hearing upon sufficient
34 cause being shown therefor or by the refusal of the arbitrators to
35 hear evidence material to the controversy or by other conduct of
36 the arbitrators contrary to the provisions of this title.

37 (6) An arbitrator making the award either: (A) failed to disclose
38 within the time required for disclosure a ground for disqualification
39 of which the arbitrator was then aware; or (B) was subject to
40 disqualification upon grounds specified in Section 1281.91 but

1 failed upon receipt of timely demand to disqualify himself or
2 herself as required by that provision. However, this subdivision
3 does not apply to arbitration proceedings conducted under a
4 collective bargaining agreement between employers and employees
5 or between their respective representatives.

6 (7) *The award is inconsistent with the law that would be applied*
7 *by a California court.*

8 (b) Petitions to vacate an arbitration award pursuant to Section
9 1285 are subject to the provisions of Section 128.7.

10 SECTION 1. ~~Section 4610 of the Labor Code is amended to~~
11 ~~read:~~

12 ~~4610. (a) For purposes of this section, “utilization review”~~
13 ~~means utilization review or utilization management functions that~~
14 ~~prospectively, retrospectively, or concurrently review and approve,~~
15 ~~modify, delay, or deny, based in whole or in part on medical~~
16 ~~necessity to cure and relieve, treatment recommendations by~~
17 ~~physicians, as defined in Section 3209.3, prior to, retrospectively,~~
18 ~~or concurrent with the provision of medical treatment services~~
19 ~~pursuant to Section 4600.~~

20 ~~(b) Every employer shall establish a utilization review process~~
21 ~~in compliance with this section, either directly or through its insurer~~
22 ~~or an entity with which an employer or insurer contracts for these~~
23 ~~services.~~

24 ~~(c) Each utilization review process shall be governed by written~~
25 ~~policies and procedures. These policies and procedures shall ensure~~
26 ~~that decisions based on the medical necessity to cure and relieve~~
27 ~~of proposed medical treatment services are consistent with the~~
28 ~~schedule for medical treatment utilization adopted pursuant to~~
29 ~~Section 5307.27. Prior to adoption of the schedule, these policies~~
30 ~~and procedures shall be consistent with the recommended standards~~
31 ~~set forth in the American College of Occupational and~~
32 ~~Environmental Medicine Occupational Medical Practice~~
33 ~~Guidelines. These policies and procedures, and a description of~~
34 ~~the utilization process, shall be filed with the administrative director~~
35 ~~and shall be disclosed by the employer to employees, physicians,~~
36 ~~and the public upon request.~~

37 ~~(d) If an employer, insurer, or other entity subject to this section~~
38 ~~requests medical information from a physician in order to~~
39 ~~determine whether to approve, modify, delay, or deny requests for~~
40 ~~authorization, the employer shall request only the information~~

1 reasonably necessary to make the determination. The employer,
2 insurer, or other entity shall employ or designate a medical director
3 who holds an unrestricted license to practice medicine in this state
4 issued pursuant to Section 2050 or 2450 of the Business and
5 Professions Code. The medical director shall ensure that the process
6 by which the employer or other entity reviews and approves,
7 modifies, delays, or denies requests by physicians prior to,
8 retrospectively, or concurrent with the provision of medical
9 treatment services, complies with the requirements of this section.
10 Nothing in this section shall be construed as restricting the existing
11 authority of the Medical Board of California.

12 (e) No person other than a licensed physician who is competent
13 to evaluate the specific clinical issues involved in the medical
14 treatment services requested by the physician treating the injured
15 worker, when these services are within the scope of the evaluating
16 physician's practice, and when the evaluating physician holds an
17 identical type of license as that of the physician requesting the
18 treatment may modify, delay, or deny requests for authorization
19 of medical treatment for reasons of medical necessity to cure and
20 relieve. The utilization review process shall be conducted as a
21 peer-to-peer evaluation process directed toward an evaluation of
22 the medical treatment requested by the physician treating the
23 injured worker, and not to an examination of the speciality of the
24 physician requesting the treatment.

25 (f) The criteria or guidelines used in the utilization review
26 process to determine whether to approve, modify, delay, or deny
27 medical treatment services shall be all of the following:

28 (1) Developed with involvement from actively practicing
29 physicians.

30 (2) Consistent with the schedule for medical treatment utilization
31 adopted pursuant to Section 5307.27. Prior to adoption of the
32 schedule, these policies and procedures shall be consistent with
33 the recommended standards set forth in the American College of
34 Occupational and Environmental Medicine Occupational Medical
35 Practice Guidelines.

36 (3) Evaluated at least annually, and updated if necessary.

37 (4) Disclosed to the physician and the employee, if used as the
38 basis of a decision to modify, delay, or deny services in a specified
39 case under review.

1 ~~(5) Available to the public upon request. An employer shall~~
2 ~~only be required to disclose the criteria or guidelines for the~~
3 ~~specific procedures or conditions requested. An employer may~~
4 ~~charge members of the public reasonable copying and postage~~
5 ~~expenses related to disclosing criteria or guidelines pursuant to~~
6 ~~this paragraph. Criteria or guidelines may also be made available~~
7 ~~through electronic means. No charge shall be required for an~~
8 ~~employee whose physician's request for medical treatment services~~
9 ~~is under review.~~

10 ~~(g) In determining whether to approve, modify, delay, or deny~~
11 ~~requests by physicians prior to, retrospectively, or concurrent with~~
12 ~~the provisions of medical treatment services to employees all of~~
13 ~~the following requirements must be met:~~

14 ~~(1) Prospective or concurrent decisions shall be made in a timely~~
15 ~~fashion that is appropriate for the nature of the employee's~~
16 ~~condition, not to exceed five working days from the receipt of the~~
17 ~~information reasonably necessary to make the determination, but~~
18 ~~in no event more than 14 days from the date of the medical~~
19 ~~treatment recommendation by the physician. In cases where the~~
20 ~~review is retrospective, the decision shall be communicated to the~~
21 ~~individual who received services, or to the individual's designee,~~
22 ~~within 30 days of receipt of information that is reasonably~~
23 ~~necessary to make this determination.~~

24 ~~(2) When the employee's condition is such that the employee~~
25 ~~faces an imminent and serious threat to his or her health, including,~~
26 ~~but not limited to, the potential loss of life, limb, or other major~~
27 ~~bodily function, or the normal timeframe for the decisionmaking~~
28 ~~process, as described in paragraph (1), would be detrimental to the~~
29 ~~employee's life or health or could jeopardize the employee's ability~~
30 ~~to regain maximum function, decisions to approve, modify, delay,~~
31 ~~or deny requests by physicians prior to, or concurrent with, the~~
32 ~~provision of medical treatment services to employees shall be made~~
33 ~~in a timely fashion that is appropriate for the nature of the~~
34 ~~employee's condition, but not to exceed 72 hours after the receipt~~
35 ~~of the information reasonably necessary to make the determination.~~

36 ~~(3) (A) Decisions to approve, modify, delay, or deny requests~~
37 ~~by physicians for authorization prior to, or concurrent with, the~~
38 ~~provision of medical treatment services to employees shall be~~
39 ~~communicated to the requesting physician within 24 hours of the~~
40 ~~decision. Decisions resulting in modification, delay, or denial of~~

1 ~~all or part of the requested health care service shall be~~
2 ~~communicated to physicians initially by telephone or facsimile,~~
3 ~~and to the physician and employee in writing within 24 hours for~~
4 ~~concurrent review, or within two business days of the decision for~~
5 ~~prospective review, as prescribed by the administrative director.~~
6 ~~If the request is not approved in full, disputes shall be resolved in~~
7 ~~accordance with Section 4062. If a request to perform spinal~~
8 ~~surgery is denied, disputes shall be resolved in accordance with~~
9 ~~subdivision (b) of Section 4062.~~

10 (B) ~~In the case of concurrent review, medical care shall not be~~
11 ~~discontinued until the employee's physician has been notified of~~
12 ~~the decision and a care plan has been agreed upon by the physician~~
13 ~~that is appropriate for the medical needs of the employee. Medical~~
14 ~~care provided during a concurrent review shall be care that is~~
15 ~~medically necessary to cure and relieve, and an insurer or~~
16 ~~self-insured employer shall only be liable for those services~~
17 ~~determined medically necessary to cure and relieve. If the insurer~~
18 ~~or self-insured employer disputes whether or not one or more~~
19 ~~services offered concurrently with a utilization review were~~
20 ~~medically necessary to cure and relieve, the dispute shall be~~
21 ~~resolved pursuant to Section 4062, except in cases involving~~
22 ~~recommendations for the performance of spinal surgery, which~~
23 ~~shall be governed by the provisions of subdivision (b) of Section~~
24 ~~4062. Any compromise between the parties that an insurer or~~
25 ~~self-insured employer believes may result in payment for services~~
26 ~~that were not medically necessary to cure and relieve shall be~~
27 ~~reported by the insurer or the self-insured employer to the licensing~~
28 ~~board of the provider or providers who received the payments, in~~
29 ~~a manner set forth by the respective board and in such a way as to~~
30 ~~minimize reporting costs both to the board and to the insurer or~~
31 ~~self-insured employer, for evaluation as to possible violations of~~
32 ~~the statutes governing appropriate professional practices. No fees~~
33 ~~shall be levied upon insurers or self-insured employers making~~
34 ~~reports required by this section.~~

35 (4) ~~Communications regarding decisions to approve requests~~
36 ~~by physicians shall specify the specific medical treatment service~~
37 ~~approved. Responses regarding decisions to modify, delay, or deny~~
38 ~~medical treatment services requested by physicians shall include~~
39 ~~a clear and concise explanation of the reasons for the employer's~~

1 decision, a description of the criteria or guidelines used, and the
2 clinical reasons for the decisions regarding medical necessity.

3 ~~(5) If the employer, insurer, or other entity cannot make a~~
4 ~~decision within the timeframes specified in paragraph (1) or (2)~~
5 ~~because the employer or other entity is not in receipt of all of the~~
6 ~~information reasonably necessary and requested, because the~~
7 ~~employer requires consultation by an expert reviewer, or because~~
8 ~~the employer has asked that an additional examination or test be~~
9 ~~performed upon the employee that is reasonable and consistent~~
10 ~~with good medical practice, the employer shall immediately notify~~
11 ~~the physician and the employee, in writing, that the employer~~
12 ~~cannot make a decision within the required timeframe, and specify~~
13 ~~the information requested but not received, the expert reviewer to~~
14 ~~be consulted, or the additional examinations or tests required. The~~
15 ~~employer shall also notify the physician and employee of the~~
16 ~~anticipated date on which a decision may be rendered. Upon receipt~~
17 ~~of all information reasonably necessary and requested by the~~
18 ~~employer, the employer shall approve, modify, or deny the request~~
19 ~~for authorization within the timeframes specified in paragraph (1)~~
20 ~~or (2):~~

21 ~~(h) Every employer, insurer, or other entity subject to this section~~
22 ~~shall maintain telephone access for physicians to request~~
23 ~~authorization for health care services.~~

24 ~~(i) If the administrative director determines that the employer,~~
25 ~~insurer, or other entity subject to this section has failed to meet~~
26 ~~any of the timeframes in this section, or has failed to meet any~~
27 ~~other requirement of this section, the administrative director may~~
28 ~~assess, by order, administrative penalties for each failure. A~~
29 ~~proceeding for the issuance of an order assessing administrative~~
30 ~~penalties shall be subject to appropriate notice to, and an~~
31 ~~opportunity for a hearing with regard to, the person affected. The~~
32 ~~administrative penalties shall not be deemed to be an exclusive~~
33 ~~remedy for the administrative director. These penalties shall be~~
34 ~~deposited in the Workers' Compensation Administration Revolving~~
35 ~~Fund.~~